

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
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ASSOCIATION FOR LOCAL TELECOMMUNICATIONS )  
 )  
Request for Clarification of the )  
Commission's Rules Regarding Reciprocal )  
Compensation for Information )  
Service Provider Traffic )

File No. CCB/CPD 97-30

To the Commission:

**COMMENTS OF AMERICAN COMMUNICATIONS SERVICES, INC.**

American Communications Services Inc. ("ACSI"), by its attorneys, hereby respectfully submits comments in support of the request of the Association for Local Telecommunications ("ALTS") for clarification of the Commission's rules and policies regarding the payment of reciprocal compensation for traffic routed to Internet Service Providers ("ISPs").<sup>1</sup> ACSI submits that under the Commission's existing policies and rules, ISP traffic must be treated as "local" traffic and compensation must be paid where calls placed to ISPs are exchanged between incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs"). The Commission should promptly clarify

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<sup>1</sup> See generally *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996), stayed in part pending judicial review sub nom. *Iowa Utils. Bd. v. FCC*, 109 F.3d 418 ("Local Interconnection Order").

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that ILEC efforts to characterize ISP traffic as "interexchange" traffic and deny compensation to CLECs under existing local interconnection agreements are unlawful.

### Introduction

ACSI is a provider of integrated local voice and data services to commercial customers primarily in mid-size metropolitan markets in the southern half of the United States. The Company initiated service as a competitive access provider, deriving substantially all of its revenues from the sale of dedicated services such as special access, switched transport and private line services. Beginning in late 1996, however, ACSI began to expand aggressively into the provision of local switched voice services as a CLEC. The Company's local switched services include local exchange services (dial tone), advanced ISDN and enhanced voice services. ACSI provides local switched services over its own network (using unbundled ILEC network elements) in some markets and through resale of ILEC local exchange services in other areas.

ACSI has 24 operational local networks and 12 additional local networks under construction. Development work is actively underway to expand to 50 local networks operating or under construction by December 1998.

Several ILECs now claim that calls made to ISPs are "overwhelmingly interexchange, not local" and are subject to the exclusion of interexchange traffic from the scope of reciprocal compensation agreements under the *Local Competition Order*.<sup>2</sup> With this

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<sup>2</sup> *Local Interconnection Order* at ¶ 1034. See also Comments of Bell Atlantic-NYNEX, *Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Inquiry, CC Docket No. 96-263, p. 13 (filed Mar. 24 1997).

justification, they have refused to compensate CLECs for ISP traffic terminated by the CLEC. For instance, Southwestern Bell has observed that:

the use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISPs premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange services as its exchange access service.<sup>3</sup>

Therefore, according to Southwestern Bell, since the FCC "specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic,"<sup>4</sup> "Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic" including calls passed to ISPs pursuant to local interconnection agreements because "this traffic is jointly provided originating interexchange access."<sup>5</sup> As described below, the ILEC position is contrary to 14 years of Commission practice and policy, and has the effect of denying CLECs the ability to recover the costs associated with terminating calls placed to ISPs.

**I. CLECs Must Be Permitted to Recover the Costs Associated with Termination of Calls Placed to ISPs**

ILECs are refusing to pay reciprocal compensation to CLECs for calls routed to CLECs for termination to ISPs. There is no dispute that the ISPs have selected CLECs as their local service providers. Nor is there any dispute that the ILECs involved routinely route calls placed by their end users to the CLECs for termination to the ISPs. In addition,

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<sup>3</sup> See ALTS Request for Clarification, Attachments (Letter to Edward Cadieux dated June 9, 1997, p. 1).

<sup>4</sup> *Id.* at p. 2.

<sup>5</sup> *Id.*

there can be no doubt that CLECs incur sizeable costs in switching such calls and terminating them to the ISPs. The only issue is how CLECs will be permitted to recover the cost of providing these services.

There are only two possible sources of compensation to CLECs for terminating calls to ISPs -- the ISPs who receive the traffic and the ILECs who deliver the traffic. However, since the Commission has decided that LECs may not charge access charges to ISPs, the ILEC is in reality the only possible source of compensation. If ILECs are allowed to escape payment, CLECs will be forced to provide free service, an outcome which is plainly antithetical to both law and policy.

## **II. The Commission Has Repeatedly Ruled That ISP Traffic Is Not "Interexchange" Traffic**

For over 14 years the Commission consistently has held that local calls to ISPs must be treated as local calls by LECs regardless of whether the ISP reformats or retransmits information received over such calls to or from further interstate destinations.<sup>6</sup> As recently as this past May, the Commission explicitly reaffirmed this long-standing policy by stating that "ISPs should not be subject to interstate access charges."<sup>7</sup> The Commission has ruled that the ISP must be treated as an "end user." Thus, a call placed to an ISP is regarded as "local" even if the ISP bridges the call to a point located in another exchange. Thus, under long-standing FCC policy, calls placed to ISPs are classified as "local," not "interexchange."

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<sup>6</sup> See generally *Access Charge Reform Order*, at ¶¶ 341-348; *MTS and WATS Market Structure*, 97 FCC 2d 682 (1983).

<sup>7</sup> *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, ¶ 345 (rel. May 16, 1997) ("*Access Charge Reform Order*").

ILECs may disagree with this treatment of calls placed to ISPs, but they may not change it unilaterally. Until such time (if ever) that the FCC decides to require ISPs to pay access charges to LECs, there is no alternative to classifying access calls placed to ISPs as "local" for compensation purposes.

### **III. Attempts to Deny CLECs Compensation for Transport and Termination Deny CLECs the Opportunity to Compete for ISP Traffic**

ISPs are net recipients of local exchange traffic. Normally, the cost incurred to terminate local calls to ISPs exceeds the local service revenue that can be charged for providing originating local exchange services. Unless CLECs can recover the costs of terminating traffic to ISPs from the cost-causers, *i.e.* the ILECs, it will not be economical for CLECs to serve ISPs, and meaningful competition for ISP traffic will be foreclosed.

### **Conclusion**

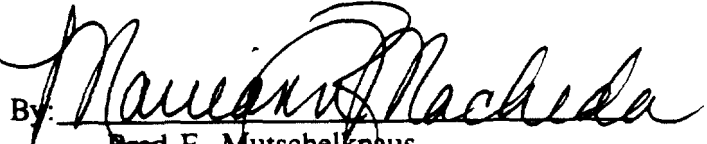
As set forth above, the ILECs' characterization of the transport and termination of calls placed to ISPs as "interexchange" is in direct conflict with the Commission's existing rules and policies. ILECs are attempting to unlawfully deny CLECs just compensation for use of their facilities and thereby derail competition in the market for local services to ISPs. ACSI respectfully requests that the Commission promptly clarify that calls placed to ISPs

constitute "local" traffic for purposes of the payment of reciprocal compensation pursuant to local interconnection agreements.

Respectfully submitted,

AMERICAN COMMUNICATIONS SERVICES, INC.

Riley M. Murphy  
Charles H.N. Kallenbach  
AMERICAN COMMUNICATIONS  
SERVICES, INC.  
131 National Business Parkway  
Suite 100  
Annapolis Junction, Maryland 20701

By: 

Brad E. Mutschelknaus  
Marieann Z. Machida  
KELLEY DRYE & WARREN LLP  
1200 19th Street, N.W.  
Suite 500  
Washington, D.C. 20036

Its Attorneys

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